

17. (New) The combination as defined in claim 12 wherein the sealing flange (31) further includes a spacer (42) between opposed surfaces of the sealing flange (31) and the closure; and the spacer (42) is arranged to prevent the upstanding rim (40) from folding completely flat.

18. (New) The combination as defined in claim 17 wherein the spacer (42) provides a recess into which the upstanding rim (40) can fold.

#### REMARKS

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this time respectfully requested.

The undersigned has provided a new title and an Abstract of the Disclosure thereby rendering moot the two issues set forth in paragraphs 1 and 2 at page 2 of the outstanding Office Action.

All of the claims of record have been redrafted to avoid the rejections under 35 U.S.C. § 112, the first and second paragraphs thereof.

The Examiner felt the application lacked a disclosure supportive of "the upstanding rim being adapted to prevent itself folding completely flat." The Examiner questioned: "How is this possible?". The answer appears at page 5, beginning at line 15 of the "SUBSTITUTE SHEET" which states: "The upstanding rim around the periphery of the liner is configured to have a spring characteristic when it is folded." In other words, the "spring characteristic" or "spring-back" characteristic of the fold is in and of itself

sufficient in the "folded structure" to provide "the biasing force required to force the periphery of the liner along the outside edge of the rim of the container." "In its folded configuration, the rim acts like a folded spring and biases the periphery of the liner around the outside edge of the container mouth." (See sentence bridging pages 5 and 6.) If the rim were folded flat, it would lack the effective biasing force of an unflattened folded spring and, therefore, the fold is simply an open fold "not folded completely flat." (See page 6, line 5.) Therefore, in the broadest aspect of the invention, the upstanding rim itself defines an open or unfattened fold and thereby prevents itself from folding completely flat.

At page 6 between lines 16 through 24, there is a description of the spacer which defines a cavity into which the upstanding rim can fold to assure the absence of flattening thereof.

Further specifics of both aspects of the invention are described beginning at page 9, line 1 of the specification through the bottom thereof and page 12, line 15.

In view of the foregoing, the withdrawal of the 35 U.S.C. § 112, first paragraph, rejection is believed to be in order and is respectfully requested.

All of the indefiniteness mentioned by the Examiner at page 3, paragraph 7, of the outstanding Office Action has also been attended to by this amendment. Accordingly, the withdrawal of the rejection appearing at page 3, section 7, first full paragraph thereof is herewith respectfully requested.

The Examiner rejected original claims 1 through 4 and 7 "under 35 U.S.C. 102(b) as being anticipated by Pierpont et al. (US 5,533,823)." As was stated by the Court of Appeals, Federal Circuit in Stoller v. Ford Motor

Co., 18 USPQ 2d 1545, 1546; Richardson v. Suzuki Motor, Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920:

A prior art reference anticipates a claim, and thus invalidates it under 35 U.S.C. § 102, if that reference discloses each and every element of the claim.

The Examiner identified by reference character 22 a sealing flange of Pierpont et al. and an upstanding rim by the reference character 26. With due respect, the so-called "liner 20" identified by the Examiner is a "bellows 20" which is defined by a "closed end 22, an open end defined by a flange 24, and a plurality of pleated or infolded portions 26 to permit expansion and contraction of the bellows in its axial direction. As is described further below, the closed end 22 of the bellows defines a sealing surface, and the infolded portions 26 permit axial extension and retraction of the sealing surface to engage the open end of the sleeve 16 and form a substantially fluid-tight seal." (See column 2, lines 54 through 64.) Therefore, the so-called "sealing flange 22" (Examiner's description) is a closed axial end 22 and not an "outermost terminal rim (40)". (See claim 1.) The Examiner's so-called "upstanding rim 26 which folds inwardly" is a centralized portion of the bellows. In actual fact, the entire bellows-like sealing member or unit 20 is designed to form a compressive seal against an upper edge of the sleeve 16 housing lipstick pomade 18. The bellows expands (Figure 2) when the cap 12 is removed and compresses (Figure 1) when the cap 12 is reapplied to the container 14. Therefore, though the lowermost and inboardmost "infolded" portion or pleat 26 defines a seal in the position illustrated in Figure 1, the upstanding outermost terminal rim or "flange 24" (column 2, line 58) does not perform a sealing function with the sleeve 16 but merely connects the entire bellows member 20 to the inside of the cover or shell 12.

Moreover, it is clear from Figure 2 that the outermost terminal flange 24 is not enfolded. The latter structure is emphasized because amended claim 1 defines applicants' closure in terms of a "sealing flange (31) having an upstanding **outermost terminal** rim (40)... **around** a periphery of the sealing flange (31)" which is, obviously, absent in the Pierpont et al. patent. Furthermore, upon applicants' closure being applied to the container, the outermost terminal upstanding rim (40) "is folded inward by the closure shell (2A) towards the sealing flange (31) to form an unflattened fold," etc. The latter is also lacking in the Pierpont et al. patent because the only outermost terminal upstanding rim thereof, namely, the rim 24 is immobilized in all positions of the shell 12. Therefore, amended claim 1 is clearly directed to novel subject matter and obviates the Section 102(b) rejection based upon the Pierpont et al. patent. Accordingly, the withdrawal of the Pierpont et al. patent and the formal allowance of claim 1 and the claims depending therefrom is respectfully requested.

The Examiner also rejected claims 1 through 10 "under 35 U.S.C. § 103(a) as being unpatentable over Erba (EP 847,930) in view of Hatakeyama et al. (US 4,238,042)." The Examiner acknowledged that the Erba teaching lacks "an upstanding rim portion of a sealing flange which cams along the closure to fold toward the sealing flange upon application of the closure to a container." The undersigned will also add to the latter that the flange 9 of Erba is folded outwardly, as is evident in Figures 1 and 3 of the drawings.

The Examiner then turns to the patent to Hatakeyama et al. which allegedly "teaches a closure 4 having a sealing flange having an upstanding rim which cams to fold toward the sealing flange upon application of the closure to a container." Interestingly enough, though the Examiner utilizes

the reference numeral 4 to describe the "closure," no reference numerals are utilized in conjunction with either the "sealing flange" or the "upstanding rim." In actual fact, this patent discloses two different seal structures, namely, one at 14a, 23 and the other at 13, 51. The undersigned will assume that the Examiner is making reference to the "sealing flange" 13 and the upstanding rim 12 of this patent. If such is the case, several important structural differences are to be noted, namely, the "upstanding rim" is not folded, is not subject to any coming action, and is not folded by a coming action "upon action of the closure to a container." Reference is made to column 1, lines 59 through 62 of this patent which describes the annular projection 13 as being "elastic." At column 2, lines 32 through 42 reference is made to "the elasticity of the elastic hollow portion 12 of the packing 1." It is not the cap, but the "inner member 2 [which] descends against the elasticity of the elastic hollow portion 12 of the packing 1 while compressing the annular portion [12] until the mutual engagement of positioning structures a and b is achieved, where the screwing is completed to realize complete closure of the opening 51." In other words, the closure 3 does not compress the "hollow elastic portion 12," and the latter is not folded but is instead compressed, as is not only fully described in the specification but is clearly illustrated in Figures 1 and 2 of the drawings of this patent.

In view of the foregoing, the formal allowance of claim 1 and each of the claims depending directly or indirectly therefrom is believed to be in order and is herewith respectfully requested.

Independent claim 11 has been drafted to the overall combination of the container, liner and closure including further specifics of the upstanding outermost terminal rim (40) and the fact that the latter is brought to its

folded unflattened condition by the direct contact of the closure shell (2A) thereagainst. The latter additional subject matter finds no counterpart in the prior art and, therefore, the allowance of independent combination claim 11 is considered proper and would be most appreciated, along with each of the claims depending therefrom.

In view of the foregoing, the formal allowance of this application at an early date is herewith respectfully requested.

Respectfully submitted,

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Attachment:      Marked-up Claims

### MARKED-UP CLAIMS



Claims 1 through 9, as amended:

Please rewrite the remaining claims of record (1 through 9) as follows:

1. (Amended) A closure comprising a closure shell (2A) and a liner (6) adapted to seal the mouth of a container, the liner (6) having a sealing flange (31)[, arranged] adapted to overlie the container mouth, the sealing flange (31) having an upstanding outermost terminal rim (40) of resilient material around [its] a periphery of the sealing flange (31), [characterised] characterized in that on application of the closure shell (2A) on the container, the upstanding rim (40) [folds] is folded inward by the closure shell (2A) towards the sealing flange (31)[, without folding completely flat, thereby] to form an unflattened fold constituting a biasing means for biasing the periphery of the sealing flange (31) against the outside edge (12) of the container mouth.
2. (Amended) A closure according to claim 1, wherein the unflattened fold of the upstanding rim (40) [is adapted to prevent itself] prevents the upstanding rim (40) from folding completely flat.

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3. (Twice Amended) A closure according to claim 1, wherein the sealing flange (31) further [comprises] includes a spacer (42)[, arranged] between [the] opposed surfaces of the sealing flange (31) and the closure[, ] shell (2A); and the spacer (42) is arranged to prevent the upstanding rim (40) from folding completely flat.
4. (Amended) A closure according to claim 3, wherein the spacer (42) [is adapted to provide] provides a recess into which the upstanding rim (40) can fold.
5. (Twice Amended) A closure according to claim 1, wherein the upstanding rim (40) is arranged substantially parallel to [the] a central axis of the closure and the sealing flange (31) is arranged at an acute angle to the upstanding rim (40)[, so that] whereby the sealing flange (31) cams the upstanding rim (40) inwardly as it contacts the neck (1) of the container.



6. (Amended) An in-bore device for a container[, ] having a body portion (20) at least part of which is adapted to be held firmly in the neck (1) of a container, and a liner portion (30)[, ] arranged to be held captive in a closure (2A) and to co-operate releasably with the body portion (20), the liner portion (30) having a sealing flange (31)[, ] arranged to overlie [the container] a mouth of the container, the sealing flange (31) having an upstanding outermost terminal rim (40) of resilient material around [its] a periphery of the sealing flange (31), [characterised] characterized in that on application of the closure (2A) and an in-bore device (20) to the container, the upstanding rim (40) [folds] is folded inwardly by the closure (2A) towards the sealing flange (31)[, without folding completely flat, thereby] to form an unflattened fold constituting a biasing means for biasing the periphery of the sealing flange (31) against the outside edge (12) of the container mouth.
7. (Amended) A closure according to claim 2, wherein the sealing flange further [comprises] includes a spacer (42)[, arranged] between [the] opposed surfaces of the sealing flange (31) and the closure[,]; and the spacer (42) is arranged to prevent the upstanding rim (40) from folding completely flat.

8. (Amended) A closure according to claim 2, wherein the upstanding rim (40) is arranged substantially parallel to [the] a central axis of the closure and the sealing flange (31) is arranged at an acute angle to the upstanding rim (40)[, so that] whereby the sealing flange (31) cams the upstanding rim (40) inwardly as it contacts the neck (1) of the container.
9. (Amended) A closure according to claim 3, wherein the upstanding rim (40) is arranged substantially parallel to [the] a central axis of the closure and the sealing flange (31) is arranged at an acute angle to the upstanding rim (40)[, so that] whereby the sealing flange (31) cams the upstanding rim (40) inwardly as it contacts the neck (1) of the container.